

ORIGINAL

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN -- SOUTHERN DIVISION

10

KATHLEEN SHAFFER,

Plaintiff,

-vs-

Case: 2:06-cv-11814
Assigned To: Cohn, Avern
Referral Judge: Scheer, Donald A
Filed: 04-14-2006 At 02:28 PM
CMP KATHLEEN SHAFFER V. UNIVERSAL F
IDELITY LP (DA)

DEMAND FOR JURY TRIAL

UNIVERSAL FIDELITY LIMITED
PARTNERSHIP,

Defendant.

Julie Ann Petrik (47131)
Ian B. Lyngklip (P47173)
Lyngklip & Taub Consumer Law Group, PLC
Attorneys for Kathleen Shaffer
24500 Northwestern Highway, Ste. 206
Southfield, MI 48075
(248) 746-3790

COMPLAINT & JURY DEMAND

Kathleen Shaffer states the following claims for relief:

Jurisdiction

1. This court has jurisdiction under the FDCPA, 15 U.S.C. §1692k(d) and 28 U.S.C. §§1331,1337.
2. This court may exercise supplemental jurisdiction over the related state law claims arising out of the same nucleus of operative facts which give rise to the Federal law claims.

Parties

3. The Plaintiff to this lawsuit is Kathleen Shaffer who resides in Chesterfield Township, Michigan.
4. The Defendant to this lawsuit is Universal Fidelity Limited Partnership ("Universal Fidelity") which is a corporation doing business in Michigan.

Venue

5. The transactions and occurrences which give rise to this action occurred in Macomb County.
6. Venue is proper in the Eastern District of Michigan.

General Allegations

7. Some time prior to January 2006, Universal Fidelity was engaged by Lowes to collect a debt allegedly owed by Kathleen Shaffer; alternatively Universal Fidelity purchased an account from Lowes allegedly owed by Mrs. Shaffer.
8. On or about February 15, 2006, Universal Fidelity communicated with Mrs. Shaffer and solicited her authorization for a postdated payment via paper checks to be created by Universal Fidelity.
9. Mrs. Shaffer initially authorized the following checks to be created:
 - a. Check #2084 dated February 28, for \$109.
 - b. Check #2085 dated March 31, for \$307.
 - c. Check #2086 dated April 28, for \$307.

10. Following that authorization, on about March 20, 2006, Mrs. Shaffer's financial position changed such that those checks could not be honored without defaulting on her mortgage and possibly losing her home.
11. Mrs. Shaffer notified Universal Fidelity of this fact.
12. Universal Fidelity informed Mrs. Shaffer that the checks would be deposited and the arrangements could not be changed.
13. Universal Fidelity's statements were false.
14. Mrs. Shaffer placed a stop payment on the remaining checks (#2085 and 2086).
15. Universal Fidelity attempted to deposit the checks in spite of Mrs. Shaffer's notice and the checks were not honored.
16. Universal Fidelity initiated an electronic funds transfer (EFT) from Mrs. Shaffer's account without her authorization and took the money from the account.
17. Mrs. Shaffer was required to pay an additional \$32 fee to unwind that unauthorized EFT.
18. Since then, Universal Funding has harassed Mrs. Shaffer by calling her multiple times with the intent of harassing her.

Count I – Fair Debt Collection Practices Act (Universal Fidelity)

19. Mrs. Shaffer incorporates the preceding allegations by reference.
20. At all relevant times Universal Fidelity – in the ordinary course of its business – regularly engaged in the practice of collecting debts on behalf of other individuals or

entities.

21. Universal Fidelity is a "debt collector" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a(6).
22. Universal Fidelity has engaged in violations of the FDCPA including, but not limited to the following:
 - a. Universal Fidelity caused Mrs. Shaffer's telephone to ring or engaged Mrs. Shaffer in telephone conversations repeatedly or continuously with intent to annoy, abuse, or harass her, in violation of 15 U.S.C. §1692d(5).
 - b. Universal Fidelity used generally false, misleading or unfair methods to collect the debt, in violation of the general prohibitions in 15 U.S.C. §1692e.
 - c. Universal Fidelity made a false representation of-- (A) the character, amount, or legal status of the debt; or (B) any services rendered or compensation which may be lawfully received by Universal Fidelity for the collection of the debt, in violation of 15 U.S.C. §1692e(2).
 - d. Universal Fidelity used unfair or unconscionable means to collect or attempt to collect the debt, in violation of the general prohibition in 15 U.S.C. 1692(f).
 - e. Universal Fidelity collected an amount without express authorization under the agreement creating the debt or other statutory authority, in violation of 15 U.S.C. 1692(f)(1).
23. Mrs. Shaffer has suffered damages as a result of Universal Fidelity's violations of the

FDCPA.

Count II – Michigan Occupational Code (Universal Fidelity) (alternative to Count III)

24. Mrs. Shaffer incorporates the preceding allegations by reference.
25. Universal Fidelity is a "collection agency" as that term is defined in the Michigan Occupational Code ("MOC"), M.C.L. § 339.901(b).
26. Mrs. Shaffer is a debtor as that term is defined in M.C.L. § 339.901(f).
27. Universal Fidelity's foregoing acts in attempting to collect this alleged debt against Mrs. Shaffer constitute violations of the Occupational Code including but not limited to the following:
 - a. (a) Communicating with a debtor in a misleading or deceptive manner, such as using the stationery of an attorney or the stationery of a credit bureau unless it is disclosed that it is the collection department of the credit bureau.
 - b. (e) Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt.
 - c. (f) Misrepresenting in a communication with a debtor any of the following:
 - (i) The legal status of a legal action being taken or threatened.
 - (ii) The legal rights of the creditor or debtor.
 - (iii) That the nonpayment of a debt will result in the debtor's arrest or imprisonment, or the seizure, garnishment, attachment, or sale of the debtor's property.
 - (iv) That accounts have been

turned over to innocent purchasers for value.

28. Mrs. Shaffer has suffered damages as a result of Universal Fidelity's violations of the Michigan Occupational Code.
29. Universal Fidelity's violations of the Michigan Occupational Code were willful.

Count III – Michigan Debt Collection Practices Act (Universal Fidelity) alternative to Count II

30. Mrs. Shaffer incorporates the preceding allegations by reference.
31. Universal Fidelity is a "regulated person" under the Michigan Debt Collection Practices Act ("MDCPA"), M.C.L. § 445.251(g)(xi).
32. Universal Fidelity violations of the Michigan Collection Practices Act, M.C.L. § 445.251 *et seq.* include, but are not limited to, the following:
 - a. Communicating with a debtor in a misleading or deceptive manner, such as using the stationery of an attorney or credit bureau unless the regulated person is an attorney or is a credit bureau and it is disclosed that it is the collection department of the credit bureau, in violation of M.C.L. §445.252(a).
 - b. Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt or concealing or not revealing the purpose of a communication when it is made in connection with collecting a debt in violation of M.C.L. §445.252(e).
 - c. Misrepresenting in a communication with a debtor 1 or more of the following in violation of M.C.L. §445.252(f): (i)The legal status of a legal action being

taken or threatened; (ii) The legal rights of the creditor or debtor; (iii) That the nonpayment of a debt will result in the debtor's arrest or imprisonment, or the seizure, garnishment, attachment, or sale of the debtor's property; or (iv) That accounts have been turned over to innocent purchasers for value.

- d. Using a harassing, oppressive, or abusive method to collect a debt, including causing a telephone to ring or engaging a person in telephone conversation repeatedly, continuously, or at unusual times or places which are known to be inconvenient to the debtor. All communications shall be made from 8 a.m. to 9 p.m. unless the debtor expressly agrees in writing to communications at another time. All telephone communications made from 9 p.m. to 8 a.m. shall be presumed to be made at an inconvenient time in the absence of facts to the contrary in violation of M.C.L. §445.252(n).

- 33. Mrs. Shaffer has suffered damages as a result of Universal Fidelity's violations of the Michigan Collection Practices Act.

Demand for Jury Trial

- 34. Plaintiff demands trial by jury in this action.

Demand for Judgment for Relief

35. *Accordingly, Mrs. Shaffer requests that the Court grant:*

- a. Actual damages.*
- b. Statutory damages.*
- c. Treble damages.*
- d. Statutory costs and attorney fees.*

Respectfully Submitted,

LYNGKLIP & TAUB
CONSUMER LAW GROUP, PLC

By: 

Ian B. Lyngklip (P47173)
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IanLaw@Pop.Net

Dated: April 14, 2006

ORIGINAL

JS 44 11/99

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE: Macomb

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

KATHLEEN SHAFFER

(b) County of Residence of First Listed

Macomb

(c) Attorney's (Firm Name, Address, and Telephone Number)

Linklip & Taub Consumer Law Group, PLC
24500 Northwestern Hwy., Ste. 206, Southfield, MI 48075
(248) 746-3790

DEFENDANTS

UNIVERSAL FIDELITY LIMITED PARTNERSHIP

County of Residence of First Listed

NOTE: IN LAND CONDEMNATION CASES, THE PLAINTIFF IS THE GOVERNMENT

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item 111)

III. CITIZENSHIP

(For

- | | | | |
|---|---|---|---|
| Citizen of This State | PLA <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PLA <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY Med. Malpractice <input type="checkbox"/> 362 Personal Injury- Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21: 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 680 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1385M) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 28 USC 7608	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Com mod wtes/ Exchange <input type="checkbox"/> 876 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 780 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multi district Litigation ☐ 7 Appeal to District Judge from Magistrate

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Plaintiff brings this cause of action for violations of the FDCPA 15 U.S.C. §1692 and 28 U.S.C. §§1331, 1337.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

 CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No
VIII. RELATED CASE(S) INSTRUCTIONS:

IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

4/13/06

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

☐ Yes
☒ No

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :
